

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON AGRICULTURE
February 08, 2005
LB 439, 492, 346

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 8, 2005, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 439, LB 492, and LB 346. Senators present: Bob Kremer, Chairperson; Philip Erdman, Vice Chairperson; Carroll Burling; Doug Cunningham; Deb Fischer; Don Preister; and Roger Wehrbein. Senators absent: Ernie Chambers.

SENATOR KREMER: Time we get started. Welcome you all to the Agriculture Committee at our hearing today. I'm Bob Kremer, representing District 34, Chairman of the committee, I'll introduce our members starting at the far right, Jessica Shelburn is our committee clerk; and next to her was Senator Chambers, is not here, if he comes we'll introduce him; Senator Don Preister, from Omaha; Rick Leonard is our research analyst; to my left is Senator Phil Erdman, he is the Vice Chair of the committee; next to him is Carroll Burling from Wausa or, no, where did I get that? That's where he's at if he's not there--from Kenesaw, it's got a saw on the end anyway; okay, and Senator Roger Wehrbein from Plattsmouth. Senator Deb Fischer from Valentine, she's new to our committee this year and done a great job. Ask you to please, if you have cell phones, turn them off, I guess I'd better turn mine off; about the time I say that mine rings, so that we don't have interruptions. There are sign-in sheets, I think there's some back in the corner, if not there's some here. Please have them all filled out when you come up and drop them in the box here. When you testify then, please spell your last name, it's not for our benefit, it's those who are reading the transcripts and they like to have the spelling right, so please spell your name, and state who you represent also. I don't know anything else I need to go over. Please keep your testimony as concise as possible, sometimes our committee hearings get pretty late in the evening and people fall asleep on you, so we don't want to do that. If somebody's stated what you were going to say, why it's nothing wrong with just saying that you agree with the person before you and at least get on record. If you have any written testimony that you'd like to have go on record, please give it to Jessica and we will enter that into the record. I think that's all I have. We will start out in the order that we have them posted as LB 439, LB 492, and LB 346. And I'll be introducing LB 439,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 2

LB 439

so I'd like to turn the rein over to Senator Erdman and he will take over.

SENATOR ERDMAN: Mr. Chairman, you're recognized to open on LB 439.

LB 439

SENATOR KREMER: Thank you, Senator Erdman and members of the committee. My name is Bob Kremer and I represent District 34. I'm here to introduce LB 439. This is a bill that gets a little detailed and complicated and it's maybe a little hard to follow, but those behind me will maybe clarify it. And as you hear it over and over again, it might be helpful. LB 439 addresses an issue that has come to light since the enactment of LB 735 two years ago. We've already had a bill before that kind of did some clarification on LB 735. Although there's no agreement among the grain industry and the Public Service Commission of the basic goals of LB 735, there has been an ongoing dispute over interpretation of the key provision in the bill with respect to certain direct delivery transactions. LB 735, just to review that a little bit, the bill resulted in the PSC, they led an examination of the grain laws following the failure of the Atlanta elevator, and that was one of the costliest failures to date, as far as what the producers and the creditors took, and a series of other warehouse problems. LB 735 incorporated recommendations arising from the PSC industry working group. And that really included removing exemptions of grain warehouses from the requirement to be licensed and bonded as dealers, if the warehouse engages in direct delivery of transactions. At that time we added the dealer bond, which was changed then from \$150,000 to \$300,000, which is more security then. It clarified a rule, and when the producers made claim against the dealer bond, when the grain is direct delivered, pursuant to contract and delivered in multiple loads that may have taken several days, and that was a bill that we also clarified on the floor and passed already. Direct delivery transactions. Direct delivery refers to situations whereby the warehouse arranges with the farmer to deliver grain directly to a third party, such as a feedlot or an ethanol plant, that the warehouse has sold grain to direct delivery and it occurs in two different scenarios. So if

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 3

LB 439

the elevator has sold grain to that feedlot or ethanol plant, then the farmer could direct deliver and get a substitution, is what this is really all about. There's two scenarios. The farmer tenders grain for sale, and that includes the cash sale or deferred payment. A producer does not intend to have a storage position on an elevator and is an unsecured creditor of the warehouse until paid. Also, before LB 735, payment was not secured by any bond, that was on a direct sale, direct delivery sale. Since LB 735, payment is covered by a warehouse dealers security provided payment is demanded within 30 days of the delivery. Tender for direct delivered grain for sale does not have recourse for the warehouse bond. It's just on the direct delivery bond at that point. The other, those direct grain for sale and the other portion of this is the farmer tendered grain for storage, and that's what we're really talking about in this bill. The farmer intends to have the grain in storage at the warehouse, substitution intended to occur, the elevator to transfer warehouse-owned grain, stored in the warehouse to producer, in exchange for the grain the farmer delivers to a third party. So if the farmer delivers to a third party, then he gets a position as the grain stored in that warehouse in the substitution. At the time of the drafting of LB 439, there was a disagreement extended between the industry and the PSC as to permissible means of accomplishing this substitution and whether direct delivery grain tendered for storage should count in calculating against the grain dealer security warehouse, that the security warehouse must maintain, dealer security warehouse must maintain. A disagreement over interpretation of the Supreme Court's ruling following the Atlanta case, whether the grower giving grain in substitution was a valid storer or owner of the grain. There was a dispute of whether he was really a valid storer, and so this is to clarify that. The purpose of LB 439 is to resolve the continued disagreement between the industry and the Public Service Commission. It's to establish statutory provisions governing the practice of substitution. It's to clarify bonding protections during various phases of the direct delivery transaction. There's different phases whether by the time you deliver it to when you get a warehouse receipt and show that it's in storage in the warehouse. It's to remove any ambiguity whether producers who obtain storage positions by substitutions are valid storers or owners. And it also provides statutory reinforcement of certain aspects

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 4

LB 439

of the pending PSC regulations. The provisions in LB 439, it creates a certified elevator program. Certified elevators are those that meet higher financial standards including to submit an annual audit, to maintain a \$300,000 net worth, and to maintain a dealer bond for grain payable. Now this area we might, we're looking at taking this out, if we can get the substitution, the paperwork, the electronic transfers done in a short time that really won't be necessary. Otherwise, what was originally in the bill was that an elevator that wanted to participate in the substitution had to put up more bonding and more security for that. The bulk of the bill is amendments to the grain dealer and warehouse act, that applies to substitution activity of certified warehouses. First of all it defines a new term, which is "grains payable." A grain payable is an obligation of a warehouse receiving direct delivery grain, grain payable is satisfied by delivering actual grain or delivering a producer documentation of producer ownership of the warehouse grain. So the documentation, if it goes to the direct delivery, it's grains payable until an electronic transfer or it's documented that it's in the warehouse, then it becomes actual grain in that warehouse, so a producer documentation or the actual delivery. Adds a default on grains payable, as an event that triggers a producer claim against the warehouse grain dealer security. It authorizes the PSC to prescribe rules for issuing custom weigh tickets for receipts of direct delivery grain. A custom weigh ticket is prima facie, I always have trouble with that word, prima facie evidence of grain payable obligation of warehouse to producer. So if he has documentation of the tickets, that should be proof that you have grain in that storage. Authorizes the PSC to prescribe rules and regulations for receipt of grain tendered for storage on a daily position record. It requires the warehouse to give disclosure to producers prior to receiving direct delivery grain of storage. Several things that they have to notify them, one is the delivery of grain, creates a grain payable obligation to producer until the substitution is complete. It explains that the warehouse is required to consummate the transfer of warehouse owned grain to producer in a timely manner. So they can't wait too long to give you evidence that it is grain in a warehouse if you direct delivered it. And the other one is, the producer may submit a copy of the form to the Public Service Commission. One of them, the producer is aware that the implications of the farm program

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 5

LB 439

eligibility. The FSA has come back and said if there's a substitution that you probably are going to lose beneficial interest in that grain and you cannot get an LDP on that. So as long as somebody understands that that's the case, then they probably would not use the direct delivery, but that's the notification that has to be made. It defines grain received by an elevator to include grain physically deposited and grain received by a direct delivery when documentation of substitution is completed. Other miscellaneous provisions: It prohibits all elevators, certified or not, from using daily position records to indicate movement of grain in or out of the warehouse unless the grain is actually physically deposited. So you can't use these daily position records to say that it was moved in and out when it wasn't, because you need to use the substitution and the paperwork that follows that. It also changes the calculation of the dealer bond. This is something we probably have to discuss a little better, maybe get some input from those that are testifying. Current law requires calculation of your dealer bond based on the annual grain purchases and the revised bill requires the calculation based on a quarterly grain purchase. The problem with that is that if you based the bond on a quarterly basis, there's not near as much transaction in that, so your bond would be somewhat less, but then is the bond enough then to cover if there should be a failure, so that's something that we need to discuss. The PSC will soon announce revisions to the proposed rules to implement a portion of LB 735 that's addressed by LB 439, and the parties of...I really appreciate and all the work that they've done, and we've had many meetings together and trying to work together. They're a lot closer to having an agreement with the regulations now that are current. So they're pretty much following, I think, what we've got in the bill, so we really appreciate them coming to that. I passed out a handout, and it shows what's contained in LB 439 and the other column is the new regs that the PSC has...are working on right now. And you can see how closely that they follow each other. There's probably some more detail in the PSC regulations than what there is in the bill, but...you can see that they're almost similar, so we appreciate a lot the work that they've done. I know it gets kind of complicated just sitting here listening to all this, but basically it gets down to ability to deliver to a third party when you want to have a storage position, and the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 6

LB 439

paperwork that it takes to establish that as a storage position rather than a sale of grain. And I'd be glad to answer any questions.

SENATOR ERDMAN: Thank you, Mr. Chairman. Any questions for Senator Kremer? Clear as mud. Thank you, Mr. Chairman. First testifier in support, first proponent of LB 439.

ROBERT ANDERSEN: (Exhibit 1) Senator Erdman and members of the Agriculture Committee, my name is Robert C. Andersen. I serve as president of the Nebraska Cooperative Council. If it meets with the permission of the Chair, I'd like to ask that our legal counsel join me up here because later on, we'll be going into a little bit about the Atlanta case and he's developed some stuff. I think it brings it down to my level. It's kind of like merchandising 101. I think it'd be very helpful if he goes through that, so if that would meet with the pleasure of the Chair?

SENATOR ERDMAN: That would be fine, as long as Mr. Weber identifies himself.

ROCKY WEBER: Rocky Weber, W-e-b-e-r, 134 South 13th Street, Suite 400, Lincoln, Nebraska, appearing in support of LB 439 on behalf of the Nebraska Cooperative Council.

ROBERT ANDERSEN: Senator Erdman, members of the Ag Committee, the Nebraska Cooperative Council...

SENATOR KREMER: Each one has to state their name when they speak out.

SENATOR ERDMAN: Yeah. Make sure that, as you're going back and forth, as you pass the baton, that we know who is speaking so that the...

ROBERT ANDERSEN: I can remember, but I'm worried about Rocky, I don't know, I just...

SENATOR ERDMAN: Well, we're worried that the transcribers won't be able to tell the difference even though we can...

ROBERT ANDERSEN: Our bill just went up, I know...

SENATOR ERDMAN: ...because we can see you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 7

LB 439

ROBERT ANDERSEN: The Nebraska Cooperative Council is a trade association representing approximately 92 percent of Nebraska's farmer-owned grain and supply marketing cooperatives. Senator Kremer, the Nebraska Cooperative Council and myself want to thank you for introducing LB 439. As a consequence of the failure of the Atlanta elevator in Atlanta, Nebraska, in March 2002, the Nebraska Public Service Commission sponsored LB 735 as passed by the Nebraska Legislature in 2003. That was intended to provide grain dealer bond protection for farmers that sell grain to a licensed warehouse that does not take possession of the grain, but rather has the grain directly shipped to a third-party destination. With the passage of LB 735, the Public Service Commission commenced its rule-making procedures to enact the regulatory revisions to effectuate LB 735. There's been an inordinate amount of time and energy spent towards the development of these regulations. As the Public Service Commission has gone about undertaking the implementation of the regulatory process, Nebraska Cooperative Council has not had a problem with the vast majority of the proposed regulations. However, the council and other industry stakeholders have been engaged in a protracted dispute concerning the proposed PSC regulations to the Grain Warehouse Act and the Grain Dealers Act, as it relates to direct-shipped grain storage programs. The issue has been very complex in adversarial times. Clearly, for those cooperatives that handle grain and undertake direct ship for storage transactions, this has been a high-priority issue. Our grain cooperatives that operate licensed grain warehouses that are licensed grain dealers, as well as the interests of noncooperative grain entities in Nebraska with similar licenses, have been impacted by the proposed amendments to regulatory provisions covering grain warehouses and grain dealers by the PSC. The regulations proposed by the PSC, until recently, would have had a material negative impact on the commonly accepted commercial grain practices in Nebraska. The ultimate impact of where the regulatory process was heading was that the direct-ship marketing options that had been available to and have been of the benefit to Nebraska farmers will be prohibited. The farmer, not the elevator, is ultimately the entity being harmed by the new restrictions the PSC has been seeking. Direct ship storage transactions, those at issue are those transactions in which a producer desires to store grain in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 8

LB 439

his or her local elevator to be sold at a later date, but due to the primary economic considerations of proximity of location, expediency during harvest, and the ability to take advantage of pricing mechanisms negotiated by the local elevator, direct ship their production to a local terminal, ethanol plant or third party with which the local elevator has a marketing relationship. Once the direct shipment is made, the local elevator transfers a like quantity and quality of company owned and commingled grain in storage at the warehouse to an open storage facility on behalf of the producer. The producer's ownership interest is the same quantity and quality of commingled bushels of grain in the elevator as that which was direct shipped. The producer maintains title, control, risk of loss over those bushels in the local elevator until such time as the bushels are sold. Once the grain is sold by the producer, the local elevator can pass along a better price, due to the efficiencies and economic benefits of not having to unload the grain at the local elevator and then reload it for shipment to a terminal, ethanol plant or other end user. In the Atlanta situation, several farmers who sold grain to Atlanta in such a manner and who had not been paid for the grain, claimed entitlement on a pro rata share of the proceeds from the grain warehouse bond that covered grain deposited and stored in Atlanta's facilities. The Nebraska Supreme Court ultimately concluded that because the grain had not been physically received at the Atlanta elevator, the direct shippers were not entitled to a share of the proceeds under the grain warehouse bond. At the time of the Atlanta insolvency, federal and state licensed warehouses were exempt from being licensed as grain dealers in the state of Nebraska. The primary intent of LB 735 was to require dual licensure of warehouses as bonded grain dealers, if a warehouse purchased grain in addition to grain that was delivered only to the licensed warehouse facility. It was only after the Public Service Commission issued its proposed regulations that the industry was made aware that the PSC was taking the position that direct-ship storage transactions would be prohibited. This was primarily disclosed when the PSC, for the first time, sought to define the term "received," I want to emphasize that word "received," as it relates to the delivery of grain for storage. One of the most material changes is that the new PSC proposed definition of "received" required the grain to be "physically deposited," again, "physically deposited" in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 9

LB 439

order for there to be receipt of the grain and have the grain warehouse bond provide security. What this means is that if a load of grain comes across the scale, and the elevator does not dump it but rather it takes it directly to a feedlot or gives the producer an open store or warehouse receipted position on the daily position report, the producer would not be protected under the grain warehouse bond, because there was no physical deposit of the grain. The transaction, however, is covered by the grain dealer security that was required by LB 735. We have been advocating that the proposed language failed to recognize what is actually an accounting function. For illustrated purposes, assume that a producer lives halfway between the Farmers Cooperative at Dorchester and Crete, Nebraska. The producer contacts the cooperative in Dorchester about delivering the grain, and the cooperative would like to have him deliver the grain directly to the Crete terminal. Under the proposed LB 439, this would be permissible because it would recognize the accounting function of that grain being delivered at Crete. The farmer would receive a grain payable that in turn would be satisfied with the transferred company owned grain to the farmer at the Dorchester elevator, as if he had delivered the grain there in the first instance. Unfortunately, under the PSC's original proposed regulations, it would have required that the grain would have to be first delivered by the producer driving to the Dorchester cooperative, physically dumping the grain, the cooperative reloading the grain and transporting it to Crete. I'm sure each of you would agree that this is not economically feasible or prudent. It now appears that a compromise is within reach between the PSC and the industry that would be in conformance with all federal regulations and does not prohibit the growing practice of direct ship for storage programs. It appears that the proposed regulations are patterned much after the language within LB 439. I would also point out to you that later on Jerry Vap will be presenting to you some regulations that they have been working on. There is another amendment to that, but that they won't have another revised draft. We have looked over those regulations and we believe they're very compatible with what we're trying to accomplish here in LB 439, but we reserve the right to look those over at the public hearing, as I understand, and Jerry will be expounding upon, and will be on March 16. At this time, I'd like to introduce the council's legal counsel, Rocky Weber,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 10

LB 439

with the Crosby Guenzel LLP law firm, who will expound upon the legal bonding aspects and upon the Atlanta Grain Supreme Court case. Upon his conclusion, I'd like to conclude with, "why legislation is needed," at this time. Rocky.

ROCKY WEBER: (Exhibit 2) Rocky Weber, again, appearing on behalf of the Nebraska Cooperative Council in support of LB 439. As you know, sometimes our law precedes commercial activity, and the law gives us opportunities after the law is passed. Sometimes, however though, the law is out of date and comes behind what has become commonly accepted commercial practices. It's true in every industry and the grain industry is no different. Now I think in this particular case this is what kind of found its way to our attention once LB 735 was passed. When the Atlanta insolvency occurred, several farmers in the area had, via direct delivery of grain, either sold grain to the Atlanta elevator and delivered it to third parties, or sold grain to the Atlanta elevator, delivered to third parties and thought they were storing grain in the elevator. And during the ensuing public hearings and other hearings before the Public Service Commission, these farmers realized that they were not protected by any warehouse bond. Up until that time, Nebraska licensed warehouse, both federal or state licensed warehouses, were not required to be bonded grain dealers or licensed as grain dealers. With LB 735, for the first time Nebraska licensed and federally licensed warehouses were required to obtain a dealer's license and obtain the appropriate dealer's security to protect farmers in their direct-delivery transactions. While LB 735 was debated and as it passed through this Legislature and once it was adopted, no one in the industry believed that it was going to change or prohibit any of the commonly accepted commercial practices that take place with regard to the delivery of grain in Nebraska. In the fall of 2003, the Public Service Commission sent out a letter with regard to received grain and what grain could be covered under the warehouse bond, and in that letter explained to the licensed warehouses and dealers that they could not account for grain in their elevator as stored grain unless it had actually been physically dumped. I had a cooperative manager from western Nebraska contact me, and he said, do you know what this means? It means that I have to, if a truck comes across my scale, that I could send directly out to a feedlot customer, and I have a sales contract with that feedlot and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 11

LB 439

somebody's delivering to me the same amount of bushels that day that I'm going to deliver to the feedlot, that I would have to weigh that truck, dump that grain, because the farmer really wants there to be storage of that grain, and then reload that same grain typically on the truck and take it out to the feedlot. That's what this means. And as we got to looking at the proposed regulations by the Public Service Commission and the definition of the word "received," it became clear that by defining "received" as only physically deposited grain, what was happening was the warehouse bond and the dealer's bond, the Public Service Commission was attempting to draw a line of demarcation as to when which bond would cover the transaction. Fifty years ago, thirty years ago, maybe even, clearly in the commerce and how grain was delivered through our economy, one could clearly identify when grain was brought in for storage, because it was always brought physically to the elevator, deposited in the elevator for storage. One could also clearly identify when grain was meant for sale, because there was no storage created. And so it's easy to keep those transactions separate. Over the last 15 or 20 years, though, the practice of direct shipment of grain has taken place, and the industry tells me that with more and more ethanol plants coming on line, more and more terminal-type shipments and the consolidation in the industry that we will see growing practices for direct shipment in Nebraska in the coming several years. I have handed out to you a small diagram of how direct shipment for delivery, direct delivery shipment alone, and standard delivery compare with each other. And it's a very simple concept, it's a simple process and it really results in how an elevator accounts for grain it is receiving, either physically in-house or receiving via an accounting transaction with a third party. And I'm not going to reread this to you, I think that it spells out what we were talking about and kind of what underlines the need for LB 439. In doing this and in looking at direct delivery shipments, what we see is it doesn't fall easily within just a dealer transaction that's covered by a dealer bond, or a warehouse transaction that's covered by a warehouse bond, because there is a period of time in which the transaction would be covered by a dealer bond, but then there is a period of time in which it would be covered by a warehouse bond. And so I think the difficulty in creating either rules and regulations, through this process, has been determining when that change takes

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 12

LB 439

place. When does it go from being a dealer transaction to a warehouse transaction? The language that's currently proposed in LB 439 does exactly that. It walks us through a direct delivery transaction from the beginning to the end; it tells us when that transaction is covered by the dealer bond; it identifies when the transaction becomes covered by the warehouse bond; and it walks us through the process and provides several different levels of protection. In drafting LB 439 and in working on this legislation, there were three things that I think were important to the industry. One was to protect the means of commerce in doing these types of transactions, an analysis of the deliveries that my clients make across the state, this would exceed 40 million bushels in any given year. And they all believe this is going to be a growing practice. The second thing was to protect the farmers in their transactions with the elevators. Nothing about LB 439 is intended to remove any protection for a farmer, remove any bonding protection in any way. In fact, we want to make sure that there's bonded protection from the time grain leaves the farmer's storage on farm or field, until the time that farmer is paid. Finally, we also sought to create language which would allow the Public Service Commission to adequately examine grain elevators and grain warehouses to make sure that the accounting for such transactions was, in fact, transparent and that the Public Service Commission would be able to readily determine, in the event there was an insolvency, what grain was covered by a dealer bond and what grain was covered by a warehouse bond. We have in the last six to eight weeks made tremendous progress with the Public Service Commission in terms of working on regulations that recognize this important measure of commerce in the grain industry and regulations that, in many ways, track and are consistent with the provisions you will find in LB 439. And we may ask, why is it, if we can pass regulations, that the Public Service Commission can pass regulations, why does the Legislature need to act? I think the Legislature needs to act, because today the law recognizes grain received as grain physically deposited in a licensed warehouse. The Atlanta Supreme Court case specifically said that. The law recognizes that grain not received is grain covered by a dealer bond if there is a contract for sale, and while the elevator is purchasing it. The law needs to also recognize how these types of transactions that don't fall neatly in one area or the other are also covered and how the farmers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 13

LB 439

have coverage in these transactions. And so that's why it is important that the Legislature does act and adopt LB 439 or a similar version of LB 439, so that we have a legal basis upon which the regulations of the Public Service Commission are based, and so that there is a notice to the industry and to farmers alike on how to conduct these transactions in such a way as to make sure that we keep this kind of commerce going and also protect the farmers.

ROBERT ANDERSEN: Senator Erdman, this is Robert Andersen speaking again. I think Rocky has really summarized in terms of why we believe that legislation is necessary. The one thing I do want to say to the committee and to all of the participants in today's hearing, either Rocky or myself are out here. We don't want to be overly critical of the Public Service Commission. I would submit to you that reasonable people can have reasonable differences. They have a job to do, we have a job to do. This is a complex issue. And I think at this point that we're at the point here within the last several weeks, where we've been able to bring a long process, and it's starting to gel together. I think that it works for the benefit of the farmers, provides protection for the farmers out there that they need to have, provides the framework for the Public Service Commission. And we would encourage your support in terms of however this may or may not be amended. With that, I would welcome any questions, as well as Rocky, at this point in time.

SENATOR ERDMAN: Thank you, Bob. Thank you, Rocky. Are there any questions for Mr. Andersen or Mr. Weber? We're speechless, men.

SENATOR BURLING: Well, I've got one.

SENATOR ERDMAN: I stand corrected. Senator Burling.

SENATOR BURLING: Thank you very much. I listened to your testimony. It sounds encouraging with your talks or negotiations with PSC. So where does that leave us today with LB 439 as a committee? Is LB 439, you like it the way it is or with amendments, is that what I heard?

ROBERT ANDERSEN: This is Robert Andersen speaking here. We supported LB 439 at the outset, but the time that LB 439 was introduced, we were a long ways apart in terms of the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 14

LB 439

"resolution" process. And there's been some give and take on both sides. And at this point in time, what we would like to do is to work around the concept, which will be presented to you later in the hearing by Jerry Vap, in terms of what they're looking at. I have not had the opportunity to specifically ask Pat. We have been visiting most on...when I say Pat, Pat Ptacek, with the Grain and Feed, I don't know exactly where we're at. We have visited every day on this thing. I think that both of us are becoming more and more comfortable. So we would like to try to work around that, in an enabling part to bring this about. It will be narrower in scope than what LB 439 is at this point in time.

SENATOR BURLING: Thank you.

ROBERT ANDERSEN: Senator, have I answered your question?

SENATOR BURLING: Yes, sir.

SENATOR ERDMAN: Thank you, Senator Burling.
Senator Cunningham.

SENATOR CUNNINGHAM: It really has nothing to do with the bill, I don't think, but just curious. If a farmer has, wants a storage position in the warehouse, but he delivers it to the terminal, or to the ethanol plant that's further than the warehouse, who pays for the extra trucking?

ROCKY WEBER: Senator Cunningham, this is Rocky Weber. I'm going to respond to your question. Typically you would not see that scenario take place. Most the time where we see the direct shipping take place is where it actually is closer for the farmer to deliver to the terminal or to the ethanol plant or the feedlot than to bring the grain to the elevator itself. Obviously, the economics of it would change if it was farther for the farmer to take it from his field on to the third party. So typically you don't see that happening. Does it ever happen? It might. But around Lincoln where we have terminals around, ethanol plants in various areas around the Plainview area, for instance, you would see more direct ship into that, from the local area rather than taking what may be a farther distance to, actually, the local elevator. And when we have the long lines in the fall at harvesttime, especially, is when you're

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 15

LB 439

going to see this type of activity take place, because everybody wants to avoid those lines. And so if they can direct haul into the ethanol plant in Plainview, rather than hauling into the Osmond...elevator in Osmond, they will do that, and yet allow Osmond to have a storage position for them there.

SENATOR CUNNINGHAM: So basically, it would just be a negotiable thing between you and the farmer, is that pretty much what you're...

ROCKY WEBER: Typically, these arrangements are set up in advance, and farmers know that in that instance, Plainview and Osmond, the Battle Creek Co-op has a sales contract with the Plainview ethanol plant to sell them grain, and probably they've announced that to their members and said, we can offer you a few more cents if you deliver it directly in there and handle this transaction this way.

SENATOR CUNNINGHAM: Okay. Thank you.

SENATOR ERDMAN: Thank you, Senator Cunningham. Senator Kremer.

SENATOR KREMER: Well, I just might add that there would never be a time when the farmer would be required to take it somewhere. I mean, it would be his decision whether he wanted to direct deliver or not, so it would have to be negotiated between the different parties, I think.

ROCKY WEBER: That's correct. It doesn't require anybody to do anything they don't want to do, I mean it...

SENATOR KREMER: It's something that would be beneficial to both, is what you're trying to say.

ROCKY WEBER: Right. Right.

SENATOR ERDMAN: Thank you, Senator Kremer. Any further questions? Seeing none, thank you for your testimony, men.

ROBERT ANDERSEN: Thank you.

ROCKY WEBER: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 16

LB 439

SENATOR ERDMAN: Next testifier in support of LB 439.

RANDY ROBESON: (Exhibit 3) Good afternoon. Members of the Agriculture Committee, my name is Randy Robeson, R-o-b-e-s-o-n. I'm the general manager of Frontier Cooperative Company located in Brainard, Nebraska. Our cooperative is a member of the Nebraska Co-op Council, a statewide, nonprofit trade association that represents 92 percent of the cooperatives in the state. I'm here to testify to support for LB 439. I have served as a member of the co-op council ad hoc committee which has been very involved in working with the stakeholders in the grain industry to assure the legislation and regulations protecting grain producers, but at the same time, not inhibit the orderly flow of commerce. The key issue that has brought concern to the industry originates from the Public Service Commission proposing the requirements that grain must be physically deposited at a licensed facility for direct ship delivery. Flexibility of delivery started to become an issue as farmers continue to grow in size. Farmers have grown with semis and larger trucks to transport grain. They have the option of delivering to local elevators, terminals, processing plants, and feedlots. By having this flexibility, the farmer has the potential to receive a better price for his grain, which of course is always positive. Over the years, this strategy has grown in popularity. When I began managing Frontier Cooperative in 1997, approximately, we were doing 200,000 bushel of...involved in direct delivery. Today we're doing over 3.5 million bushel, and this is only, I see, as growing in the future. And this is to strive efficiency of the grain industry. Not every farmer shipment of grain is simply bought, sold at each delivery transaction. For example, the farmer may want time to consider when he or she wants to price or sell the grain, but wants to deliver before the sale. A local cooperative has the sale made to another market, a third party, and based on the ownership of the facility, instead of having the farmer deliver to the local elevator, the farmer delivers on the sales contract as a designated user, or a third party. A storage position is placed in the cooperative. This saves the cost of loading and unloading the grain at the local co-op and can be reflected in the bid to the farmer when he decides to sell. This creates a win-win for both situations, for both the farmer and the cooperative. Through the use of direct

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 17

LB 439

delivery, we have been able to enhance the profitability to the farmer at a greater degree. By utilizing the expertise of our grain merchandising people, we can generally negotiate a better price with an end user than an individual farmer can. This is because our contracts are usually of much larger volumes than an individual farmer can sell. That difference in volume can be a significant difference in contract prices. Also with the end user, you can...with the volume...delivery to keep that end user with a steady supply of corn also gets you a better bid. In summary, we need to assure this practice as a direct delivery and continue so the farmers and the elevators can continue to handle grain in an efficient manner. Frontier Cooperative is located between Omaha and Columbus. We have 120 miles long and about 40 to 60 miles wide; we have 13 locations; we have over 4,000 members; and we handle about 55 to 60 million bushel. As ethanol plants keep getting built and end users keep getting built for the usage of our grain, this is going to become more and more of a factor throughout the years. I see nothing but just growing on and on for direct ship.

SENATOR ERDMAN: Thank you, Randy. Any questions for Mr. Robeson? Seeing none, thank you for your testimony today.

RANDY ROBESON: Thank you for your time.

SENATOR ERDMAN: Next testifier in support of LB 439. May we see a show of hands of how many others are wishing to testify in support? I see three more.

BILL SCHUSTER: (Exhibit 4) Good afternoon, Senator Erdman, and the rest of the Agriculture Committee. My name is Bill Schuster, S-c-h-u-s-t-e-r, from Phillips, Nebraska. I'm speaking today principally as a producer, but I'm also board chairman of the Aurora Co-op Elevator, in Aurora, Nebraska. I'm also on a board of directors of Ag Processing, Inc., or better known as AGP, a grain marketing and soybean processing company. I'm on the board of directors of the Nebraska Co-op Council. I'm testifying today in support of LB 439, which would provide statutory authority to specifically allow the direct shipment of grain while allowing a producer to create a storage position in his or her local elevator. I believe that LB 439 is necessary to assure producers and the elevators that a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 18

LB 439

practice that has been common in the industry for a number of years can continue. Requiring grain to be physically deposited at a warehouse before an elevator can open a storage position for a producer makes the grain market much more inefficient. If producers do not have the option of direct delivery while securing a storage position at their local elevator, there will be dollars taken out of our pockets and producers can least afford it. Certainly...currently, I can deliver grain to the facility other than the elevator or the co-op I have a contract with if that facility has a contract to buy grain from the co-op I'm doing business with. As an example, let's say that the Aurora Cooperative has a contract to provide a feedlot with grain that is three miles from my farm. Currently, I can deliver the corn to the feedlot through the use of the scale tickets and be credited with x number of bushels to be deposited at the co-op. I'm actually doing business with the cooperative, I just do not have to haul the grain all the way into Aurora, which is 15 miles from my farm. By not having to haul the grain as far, I'm saving money on trucking and time to do it, and the cooperative does not have to reload the grain and haul it back out to the feedlot, again saving money. Also, in many cases, the elevators have been able to negotiate a higher price with the feedlot, ethanol plant or terminal and then be able to pass along the higher price to me. Finally, as we all know, the more you handle grain, the more damage you cause, so handling it one less time will also provide a quality product to the end user. Keep in mind that this simple example that I have provided occurs many times across the state, with a direct delivery to feedlots, ethanol plants and terminal elevators, that is becoming more common each year. We would simply be making the grain trade less efficient by not allowing direct delivery of grain and, in fact, taking money out of our producers' pockets. In summary, I believe that it is important to have the legislation that specifically allows this common practice to continue. By allowing the current practice to continue, we are providing a higher quality product to our customers and we are eliminating costs and in the end, I am able to receive more revenue for the crops that I produce. Thank you for your attention, and if there's any questions, I'd sure attempt to answer them.

SENATOR ERDMAN: Thank you, Bill. Any questions for

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 19

LB 439

Mr. Schuster? Senator Cunningham.

SENATOR CUNNINGHAM: Yes, Mr. Schuster...

BILL SCHUSTER: Yes.

SENATOR CUNNINGHAM: ...when you deliver as your example to the feedlot by your farm, then your co-op in Aurora just accepts the scale tickets from the feedlot, is that correct?

BILL SCHUSTER: Yes. Because, if it's a certified scale, which they are...the feedlots...

SENATOR CUNNINGHAM: Like who's responsible for the transfer of the tickets and...

BILL SCHUSTER: Either I take them in myself or else they can electronically transfer the tickets, well both ways. They do both things, so it can either be up to me or else the bushels are, there's a bill of lading that is sent back to the cooperative to cover those bushels.

SENATOR CUNNINGHAM: Okay. Thank you.

BILL SCHUSTER: So there is a double paper trail created, there, so because I know I get a copy myself and then the feedlot also will send a copy to the elevator.

SENATOR CUNNINGHAM: Okay, so the farmer gets a copy when they deliver the grain.

BILL SCHUSTER: Yes. Um-hum.

SENATOR CUNNINGHAM: Okay. Thank you.

SENATOR ERDMAN: Thank you, Senator Cunningham. Any further questions for Mr. Schuster? Seeing none, thanks for your testimony today.

BILL SCHUSTER: Thank you.

SENATOR ERDMAN: Next testifier in support of LB 439. Oh, I'm sorry, Bill, did you get a sign-in sheet?

BILL SCHUSTER: Yes.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 20

LB 439

SENATOR ERDMAN: Okay. Just wanted to make sure you got that in there. We sometimes have to remind the veterans, too, so it's okay. You can finish that when you're done, unless you're a quick writer.

PAT PTACEK: I'm not that quick.

SENATOR ERDMAN: Okay.

PAT PTACEK: (Exhibit 5) Senator Kremer, members of the Ag Committee, my name is Pat Ptacek, P-t-a-c-e-k, executive vice president of the Grain and Feed Association here in Nebraska, appearing today in favor of LB 439. The Grain and Feed Association is a 108-year-old nonprofit trade association comprised of about 500 members representing a cross section of large and small, private and cooperatively owned grain elevators, feed mills, ethanol facilities and allied industries, throughout the state and region. We represent around 80 percent of the commercial storage in the state. LB 439 clarifies provisions passed more than two years ago under LB 735, and establishes a mechanism that grains received, when either physically deposited in the elevator or when the elevator operator opens an account as a grains payable obligation for a producer without requiring the physical disposition of the grain as long as the operator owns and pledges company owned grain against the producer's position. Simply put, the bill would allow a warehouse to exchange a storage position for warehouse owned grain to a producer so they can efficiently deliver his or her grain to a third party. Under LB 439, an elevator would also need to meet higher financial standards, such as a CPA level audit, and an increased net worth to be certified to open these types of grain payable obligations and cover them under their warehouse bond. However, and importantly, the bill would also adjust the current PSC formula used to establish the level of the grain dealer's bond from the amount greater than \$35,000 or 7 percent of grain purchases by the applicant in the preceding license year, to the amount greater than \$35,000 or 7 percent of grain purchases during the largest amount of quarterly grain purchases in the preceding year. The bill also authorizes the PSC to issue documentation for direct delivery grain, and prohibits the warehouse from corrupting its daily position record by opening a storage position for a producer without owning

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 21

LB 439

enough company owned grain to cover that position. The Public Service Commission, the grain industry and the Legislature worked to pass LB 735 nearly two years ago. The bill does implement a number of reforms the NGF supported, including an aggressive schedule of fines to address certain and repeat violations of state warehouse laws including charging for additional PSC repeat inspections; extending current PSC protections to additional merchandising activities, improved monitoring of unlicensed grain dealers, and establishing civil penalties; and a financial felony background check for anyone applying for a warehouse or grain dealer's license. As we have stated before to this committee, last year as well, the NGF would not have supported LB 735 had they realized that PSC would attempt to implement sweeping changes by rule to alter the accepted definition of "delivered," and for the first time under rule and regulation define the word "received," as any grain that is physically deposited into a licensed public warehouse. Under that definition, grain crossing a facility's own scale at their primary warehouse location, and not being physically deposited, would now be classified as a direct haul subject to the additional dealer and bonding requirements. Fortunately, the grain industry through the combined efforts of the Nebraska Grain and Feed Association and the Nebraska Cooperative Council has been successful in delaying the most contentious rules from being implemented. The industry has also presented the PSC with several alternative proposals including the higher financial standards. Including the course of the last two years, and especially last summer, the industry proposed several proposals in order to reach some middle ground with the PSC. The higher financial standards under LB 439 were added in an attempt to impress upon the PSC just how important the direct delivery issue was for the industry and to producers. In practicality and as mentioned before, the proposed definition has distorted and unnecessarily increased a dealer's bonding requirement. Under the current PSC formula, many elevators already holding the valid warehouse bond are now required to "double-up" or obtain a dealer's bond that in many instances are doubling the amount of their warehouse bond. It makes some sense that if a licensee, under the current rules, is liable for 30 days of grain purchases, the Grain and Feed Association continues to support the concept of establishing the dealer's bonding levels based on a more reliable quarterly, higher quarterly

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 22

LB 439

basis rather than the yearly basis, as is currently set forth in statute and PSC rules. The Public Service Commission's attempt to have grain physically unloaded and then deposited into licensed facilities in order for it to be claimed anything other than a direct sale and the proposed prohibition of grain substitution has required us to support LB 439. The language in LB 439 regarding proper documentation is important. Since July 9 of 2003, the Grain and Feed Association indicated to the commission that a properly prepared grain receipt executed by the dealer or warehouseman can resolve many of the issues surrounding this debate, especially as they relate to the actual intent for the disposition of the commodity. The NGF recommended specific language and a paper trail to determine the intent of the original contracts, that would have, the PSC would have another tool available to reflect that actual criminal intent of any warehouse and/or dealer who acts improperly under the terms of the regulations. As mentioned before, and because of the industry opposition, the rules have ground to a halt. Recent developments have caused the PSC to redraft some of the controversial rules and regulations that would redefine what received grain means and prohibit substitution of grain. The PSC has presented the industry with a new set of rules and regulations, including additional definitions that the Grain and Feed Association believes merit additional consideration and feedback. These proposed rules and definitions would restore warehouse's ability to exchange a storage position for a warehouse owned grain to a producer, so they can efficiently deliver his or her grain to a third party without creating additional financial standards, as proposed under LB 439. However, if the industry does agree that the new draft rules achieve the goals for which we have advocated for over two years, we strongly urge the committee to consider eliminating the proposed financial requirements, roll the new PSC definitions into statute, and to adjust the current PSC formula used to establish the level of the grain dealer's bond and to base that bond on the highest quarterly grain purchases in the preceding year. We appreciate Senator Kremer's interest in resolving these problems, and you know you have gone the extra mile, Senator, to try to come up with a compromise, here, and I think that we're very close to achieving it. I would urge the committee to advance the bill with the previously mentioned suggestions. The Grain and Feed Association will continue to work with

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 23

LB 439

the committee on the bill and the Public Service Commission on the draft rules in hopes of a common-sense compromise. And while we have not yet agreed to any specific proposal or outline, the Nebraska Grain and Feed Association pledges to continue to explore all issues surrounding the continued points of disagreement and all possible solutions. Thank you for your time today.

SENATOR ERDMAN: Thank you, Pat. Any questions for Mr. Ptacek? Senator Wehrbein.

SENATOR WEHRBEIN: I am not always familiar with all of this and the past history, but what's the rationale behind the 7 percent?

PAT PTACEK: That's...I believe that 7 percent, and that has been something that we have, I've talked a little bit to Mr. Fecht, from the warehouse division, the 7 percent of an average over a 12-month period, that their concern is 7 percent over the highest quarterly. That 7 percent achieves as closely as possible, that 30-day coverage under a dealer bond, because that's as long as you are to carry a producer under some of those contracts.

SENATOR WEHRBEIN: Okay.

PAT PTACEK: And some of the concern expressed by the Public Service Commission and Mr. Fecht is that that 7 percent, even at the highest quarterly...average sales, is not going to be reflective of that 30 day, to carry it. So we discussed the possibility of increasing that 7 percent to maybe 12 percent or 14 percent of that highest quarterly average in order to better reflect and actually kind of, you know, a lot of those transactions are at the beginning of the year. And so it would be fairly easily, I think more reflective for the dealer to be tied to that higher quarterly average than over that 12-month running average at 7 percent. But the 7 percent was there, as I understand it, over the 12 month to carry it as close to 30 days as possible, that bonding coverage.

SENATOR WEHRBEIN: Okay. Thank you.

SENATOR ERDMAN: Thank you, Senator Wehrbein. Any further questions for Mr. Ptacek? Seeing none, thank you for your

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 24

LB 439

testimony.

PAT PTACEK: Thank you, Senator.

SENATOR ERDMAN: Next testifier in support of LB 439, I believe there's one more, in addition to Mr. Rempe.

JAY REMPE: Senator Kremer and members of the committee, my name is Jay Rempe, R-e-m-p-e. I'm state director of governmental relations for Nebraska Farm Bureau, here today on behalf of Nebraska Farm Bureau Federation in support of LB 439. I think many of the testifiers before me outlaid the issue. I'll just make a couple points. One, this whole issue of direct deliveries for storage, obviously, as previous testifiers have mentioned, there are some cost savings, some efficiencies, some advantages that producers and grain warehouses can take advantage of. And I think LB 439, provides the mechanism for the paperwork to flow that would allow those kind of transactions to continue, set up the regulatory framework, and still provide the protections that the law intends to afford for producers, and so for that reason we're very supportive. We're also understanding that the Public Service Commission and the industry has been working diligently trying to resolve this issue through regulations and we certainly encourage that, and would offer our help where we can. And one last final point I'd like to make, every time this issue comes up in front of our voting delegates, and we talk about grain warehouse laws and grain dealer laws, there's a lot of uncertainty on the part of producers, exactly what's covered and what isn't. And you'll see that reflected in our position statement on the issue that producers should become educated and informed of what the law provides in the way of protections. And the reason I say that is, both the bill, LB 439, and the regulations, the draft regulations that I have seen and Senator Kremer mentioned this, provide for disclosure provisions that producers need to be made aware of what the protections are afforded them and then also the eligibility of farm program payments, and that might become under question. And I think that's important provisions that haven't been brought up before the committee, and those are certainly two provisions that we feel strongly about, should be included in whatever package moves forward. And with that, I'd be happy to answer any questions you might have.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 25

LB 439

SENATOR ERDMAN: Thank you, Jay. Any questions for Mr. Rempe? Seeing none, thank you for your testimony today. Next testifier in support, I believe the last. Anyone else wishing to testify in support of LB 439? You're up.

MICHAEL KELSEY: Senator Erdman, members of the Agriculture Committee, my name is Michael Kelsey, K-e-l-s-e-y. I'm executive vice president of the Nebraska Cattlemen, I'm here on behalf of the cattlemen in support of LB 439. Our primary reasons for support have already been verbalized to you, therefore I'll not take up anymore time and I would be happy to answer questions, and encourage the committee to advance.

SENATOR ERDMAN: Thank you, Michael. Any questions for Mr. Kelsey? Thank you for your testimony today. We'll now proceed to opponent testimony. First testifier in opposition to LB 439? Seeing none, is there anyone wishing to testify in a neutral position on LB 439? Welcome, Mr. Commissioner.

JERRY VAP: (Exhibit 6) Good afternoon. Good afternoon, Mr. Chairman and members of the committee. My name is Jerry Vap, J-e-r-r-y V-a-p, and I'm the chairman of the Nebraska Public Service Commission. The commission is testifying as neutral on LB 439. LB 439 attempts to create a program under which a producer may obtain a storage position in a warehouse by shipping grain directly to a third party. Such activity is currently taking place and is already allowed under current law. In that regard, the bill may be unnecessary. The commission has worked with the Nebraska Cooperative Council, the Nebraska Grain and Feed Dealers Association, in developing rules and regulations to make clear that direct shipment of grain for storage is allowed. The proposed regulations resulting from these discussions were released for comment by the commission today, and a hearing has been scheduled for March 16, 2005. We have provided a copy of the proposed regulations to you and the first copy we had with us had a couple of typos in it, some omitted words, we have corrected copies in your packet now. We believe these rules address most of the concerns raised by the industry. The proposed regulations mirror many of the provisions of LB 439, however, the regulations provide a more streamlined system of accounting

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 26

LB 439

for direct ship transactions than the system set forth in the bill and do not create an additional licensing step for participation in the program. The commission previously drafted a memorandum which we have provided to you, which outlines our concerns regarding this bill. Many of these concerns have been addressed by our proposed regulations; some concerns, however, do remain. Under the proposed regulations all warehouses may provide storage positions for the direct shipment of grain. LB 439 requires additional certification and minimum net worth requirements in order for a warehouse to participate. The commission is also concerned that the calculation of the dealer bond would be severely diluted, that would severely dilute the protection afforded by the bond established in LB 735 and passed in 2003. We believe we have addressed, in our proposed rules, the concerns raised by the industry. In the event that LB 439 is enacted, the commission would have to initiate a new rule and regulation proceeding to implement the law. We are in a position now to move forward with rules and regulations. LB 439 would delay that process by a year and possibly longer. We do not oppose LB 439, we just think we've got a more efficient way of addressing the same issues. Be happy to respond to any questions.

SENATOR ERDMAN: Thank you, Jerry. Any questions for Mr. Vap? Senator Burling.

SENATOR BURLING: Thank you, Mr. Vap, for coming today. Having not had time to look at this very closely, do you address the 7 percent in this proposal you handed out?

JERRY VAP: I don't believe we do, and I would defer to one of our warehouse department directors, if they could come up a little bit later and answer that question.

SENATOR BURLING: Okay.

SENATOR ERDMAN: Thank you, Senator Burling. Any further questions for Commissioner Vap? Senator Kremer.

SENATOR KREMER: Well, Jerry, I'd just like to express my thanks to you for working together, we have the last several months, and we would like to continue to do that and address maybe a couple of these issues with, and I had mentioned in my opening, to the certification that some, maybe not be

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 27

LB 439

necessary, and so we'd like to continue to work together with all the groups, and see if we can accomplish this.

JERRY VAP: That is our goal also, Senator, and I appreciate your patience with all of this, and we would hope that we can iron out the differences that we may have on a couple of minor issues here, they're not minor but they are in the overall scheme of things, they're a little smaller than some of this. And we would pledge our support to continued working on that.

SENATOR ERDMAN: Thank you, Senator Kremer. Senator Wehrbein.

SENATOR WEHRBEIN: Just a matter of interest. How often do you change regulations over a period of time in any industry? Is it quite frequently or...

JERRY VAP: Generally, the rules and regulations are only called for when there's new legislation. We, from time to time, will change filing fees and things of that type, as a matter of course, but rules for something of this type would be done and that would be the end of it unless new legislation were passed.

SENATOR WEHRBEIN: And I don't know, do you have any history of that? Is it two, three years, five years? I mean I probably...probably hard to know.

JERRY VAP: LB 735, we believe, was probably the first grain handling legislation to be passed in maybe 20 or 25 years. And as it had been testified before, the Atlanta elevator failure is what prompted that bill and the making of these rules. The individual operating that elevator, first of all, had a felony on his record that we could not ask about under the old law, the new law we can. He also had had individuals, including his own father, take grain directly to a feedyard or ethanol plant, promised that he would create a position for them in the elevator, but never did. And consequently they may have had a scale ticket from the ethanol plant or the feedyard, but it meant nothing because there was no documentation in the elevator. And so LB 735 addressed that. The rules are now able to create that position and we had some differences of opinion about definitions, on "received," and "substitution." We had some

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 28

LB 439

documentation from the farm services agency that said substitution was not allowed. And it come down to, and this was from the state office, thanks to the co-op council, they went to Washington, D.C., and got a clear definition of what they meant by "substitution," and what was not allowed under their definition. And we discovered that it was not a literal translation--that you could substitute corn for corn in a warehouse. And as long as that warehouse had company owned grain to cover what they were...the position they were creating, And we believe our rules now will reflect LB 439 in that respect. And we will accept any further changes that the industry may offer at our hearing, or before the hearing even, it's open, on that rule making, and then we intend to adopt the rules as they are presented to you, unless the industry has some other minor changes to make.

SENATOR WEHRBEIN: It probably won't be 25 years before we make changes again the way things are going. We'll probably fly it to the moon and come back. (Laugh)

JERRY VAP: I think probably, as fast as Congress changes, there probably is going to be some other people thinking some changes ought to be made.

SENATOR ERDMAN: Thank you, Senator Wehrbein. Any further questions for Mr. Vap?

JERRY VAP: Okay. I want to ask Mike Bartels from our grain department to come up and answer Senator Burling's question about the dealer bond.

MIKE BARTELS: I'm Mike Bartels, I represent the Nebraska Public Service Commission.

SENATOR ERDMAN: Mike, can you spell your last name, please.

MIKE BARTELS: Yes, B-a-r-t-e-l-s. And Senator Burling, I'll try to answer your question. The 7 percent number was arrived at as a number to approximate the coverage for the 30-day window that producers can file a claim against their bond. I don't have my calculator with me, but I think 7 percent equals 22 or 23 of those 30 days, so I think 8 percent would be over 30 days and 7 percent is slightly under, so that's where that calculation came from.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 29

LB 439

SENATOR ERDMAN: Senator Burling, you have a question?

SENATOR BURLING: Thank you. I was just wondering if you recommended increasing the 7 percent?

MIKE BARTELS: I don't believe we do at this time because the proposed rule still indicates that we're only covering a 30-day window of time, and so 22 days should be sufficient, with the weekend. There's only about 22 business days in a month anyway.

SENATOR BURLING: Okay. Thank you.

SENATOR ERDMAN: Thank you, Senator Burling. Any further questions for Mr. Bartels? Seeing none, if you could fill out a testifier sheet for us as well, that will assist us in making sure we get you in the record. Thank you.

MIKE BARTELS: Thank you.

SENATOR ERDMAN: (Exhibit 7) Anyone else wishing to testify in the neutral capacity on LB 439? Seeing none, Senator Kremer, you're recognized to close. I also will note as Senator Kremer is coming forward, there's a letter in neutral position from the Nebraska Bankers Association submitted by Robert J. Hallstrom. Senator Kremer.

SENATOR KREMER: Thank you. I'd just again like to thank all the parties that have been involved in the negotiations and discussions in the past and I really appreciate that. I think that's the way you get something accomplished. The couple things that I had mentioned and I was mentioning again, is that certification, we will look at that and I think we'll probably go to like hold the bill for a little while and see how the rules come out, how everybody reacts to the new rules by the Public Service Commission to see if there should be some other changes and go from there. Again, what we're trying to do has to work for the producer, the farmer, it has to work for the grain dealers, it has to work for the Public Service Commission, because they're here to protect the farmer and in case of default that they have the rules in there and the procedures to follow that, to protect the producers as much as possible. We have had discussions with the banking industry, too, to make sure that a lien on this grain follows through each of these

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 30

LB 439, 492

transactions, so that the time that it's in transaction after it's been direct delivery until you get a warehouse position on that, that it makes sure that that lien follows that grain on through and does not break at some point. And they've felt comfortable, well, we've got feedback from them on that. Again, the grain dealer's bond that we created through LB 735 would cover the grain up until that time that they get a warehouse position. At that time then it would transfer the bond to the warehouse and so that we feel that there is good coverage all the way through that. It's something that the Public Service Commission can track and detect if there is anything that's been done fraudulently or any way that they can come in and correct that or else take appropriate steps. So with that, thank you for your interest and thank you for all of you who have come and testified to try to work this out.

SENATOR ERDMAN: Thank you, Mr. Chairman. Thank you for your leadership in this area. The members are also receiving a copy of the letter in neutral capacity from the Nebraska Bankers Association. And that will close the hearing on LB 439. And I will turn the Chair back to Senator Kremer.

SENATOR KREMER: Thanks, Senator Erdman. At this time we'll open the hearing on LB 492. This was a bill that was brought to us, I believe, by the Public Service Commission, so Rick Leonard, who is the research analyst for the committee, will introduce the bill.

LB 492

RICK LEONARD: (Exhibit 8-9) Thank you, Mr. Chairman. My name is Rick Leonard, research analyst for the Agriculture Committee, and that's spelled L-e-o-n-a-r-d. I do have a couple items to distribute to the committee members when the page is available. LB 492, as stated in the statement of intent prepared for the bill, the purpose of the bill is to remove any ambiguity under current law, whether Section 88-547 of the Nebraska Grain Warehouse Act takes precedence in determining the disposition of all grain inventories of a failed warehouse, regardless of conflicting perfected security interests in warehouse owned grain by any creditor of the warehouse. It is intended that LB 492 does

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 31

LB 492

not change existing law, understandings under the statutes as currently written, or case laws interpreting those statutes, but merely reinforces the current law. There are two primary divisions to the bill, the first embodied by Section 3 of the bill clarifies the nature of grain physically deposited into a warehouse and affirms the priority of storage claims upon grain inventories at the time PSC closes the warehouse and takes title to any grain inventories. The second division corresponding to Sections 4 and 6 of the bill, requires notification of the PSC of any third party actions to assert possession of grain within a warehouse. And it imposes a stay upon such action upon the PSC's intervention pursuant to the Warehouse Act, specifically these sections provide as follows: Section 3, this section essentially creates a presumption the grain physically deposited when evidenced by a scale ticket or warehouse receipt is deposited for storage and not for sale unless deposited by priced scale ticket or signed contract passing title to the warehouse upon deposit. The amendment you have before you, and I don't...I neglected to write down the amendment number, the amendment I just distributed makes a clarification of that section, that that applies for purposes of the Grain Warehouse Act only, so it's clear that it's not...that presumption's not necessarily applicable for other provisions of law, outside the Grain Warehouse Act. That section also declares that upon the PSC's closure of a warehouse and taking title to grain, including grain owned by the warehouse licensee, all grain so seized is subject to a first priority lien of owners, depositors, and storers. The lien is expressly declared superior to any lien or security interest. Section 4 requires written notice to the Public Service Commission within 10 days of commencement of any action by a creditor to foreclose on any claim on a creditor's lien or security interest harmonizing reference to Section 4 and inserted into a replevin for procedures elsewhere in law, which I believe is Section 1 of the bill. Section 6 amends existing Section 88-547 of the Grain Warehouse Act to provide that PSC's exercise of authorities under section to close a warehouse and take title to grain, impose a stay upon the commencement or continuation of any third party action or proceeding until the disposition of grain is completed under the...as provided for in that section. Section 3 and 4 are assigned to the Nebraska Grain Warehouse Act by Section 2 of the bill. There is a revisor's amendment, I believe in Section 5 of the bill

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 32

LB 492

unrelated to the other purposes of the act. The bill addresses an issue that first came to light with the failure of the Richland Warehouse, I believe that was in 2001, I may be incorrect, it might have been 2002, and I defer to the PSC to give a little more detail on that bill. At the time when we became aware of that, Senator Kremer, I know you and I discussed and we had some concerns if the Bank of the Valley was...had filed an action to replevin grain that they had a security interest in and were making the case that their petition to the court was, our security interest is superior to the PSC's ability to take title under the statute. That case in that particular instance would have taken about 45,000 bushels...would have been taken by...under security interest leaving that much less to distribute to farmers and ranchers. We had discussed that that had some serious implications for the integrity of the Grain Warehouse Act. The letter that I distributed and the members have is, I think, explains the implications we foresaw, if the Bank of the Valley or the lender in this case had been successful and that concludes my testimony, I guess.

SENATOR KREMER: Okay. Thank you, Rick. I guess, any questions of Rick? If not, thank you. And first proponent, please.

JERRY VAP: (Exhibit 10) Good afternoon, Mr. Chairman and members of the committee. My name is Jerry Vap, J-e-r-r-y V-a-p, and I am the chairman of the Nebraska Public Service Commission. The commission supports LB 492 and would like to thank Chairman Kremer for introducing it on our behalf. LB 492 was first introduced last year as LB 992. It is an attempt to clarify and reinforce the grain warehouse laws in Nebraska as they relate to the commission's ability to close a warehouse in the event of a failure. In 2002, the commission closed a warehouse located in Richland, Nebraska, which is near Columbus. Before the commission could officially take title of the grain, the warehouse's lending institution filed a replevin lawsuit in district court. The lawsuit sought to take title to warehouse owned grain after the warehouse defaulted on a loan secured by the grain. The bank's lawsuit sought to assert its UCC lien ahead of the recipients' receipts held by producers storing grain in the Richland elevator. In the end, the parties did settle the case, but it took a long time to get there. We believe the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 33

LB 492

law is clear as it now stands, but the bank in the Richland case did not. In the end, it cost the commission a lot of time and resources. It cost the Attorney General's office substantial time and resources. But most importantly, the bank's uncertainty about the law cost the farmers storing grain in the warehouse. Final payments were delayed over 12 months while the bank's lawsuit was being resolved. The banking industry expressed concerns regarding the use of the word "bailment" in LB 992, and that if the bank successfully completes a replevin lawsuit, taking title of the warehouse owned grain, the commission might upset the replevin, even undo it under this bill. We've eliminated the use of the term "bailment." We've also added a notice provision requiring any creditor of a warehouse to notify the commission within 10 days of bringing any judicial proceeding to enforce any claim against the grain contained in the warehouse. Such a notice provision will give the commission time to discover if the grain in the storage was sufficient to satisfy the bank's claim and the potential claims of all storers of grain. In the event the commission chose to take title to the grain, its action will operate as a stay of any other judicial proceeding related to that grain. That brings to me to my closing point. We believe we have addressed concerns from the Nebraska Bankers Association about this bill. It appears as if loans were being made to warehouses under faulty assumptions about the bank's position. This puts not only the bank at risk, but also the warehouse and consequently the storers of the grain in that warehouse. The commission believes that this bill offers the banking community a clear explanation of the current state of the law. LB 492 does not change the law. It clarifies the old law that was confusing enough to allow a bank to hold up payments to almost 20 farmers for 12 months. LB 492 can prevent such a situation from recurring. The commission asks that you advance LB 492 and we would be happy to respond to any questions.

SENATOR KREMER: Thank you, Jerry. Any questions? This is really just to clarify what we believe is the practice and even what the courts have probably stated that it is...you did settle outside...

JERRY VAP: We did but it was about...

SENATOR KREMER: ...before it went completed.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 34

LB 492

JERRY VAP: ...it was less than 100 percent of what the farmers had coming. It was 98 percent, roughly in that vicinity. So we got almost all of it, but we always operated under the assumption that when we closed a warehouse, we took title of all grain there and sorted things out at the hearing on the...at the claims hearing. And in this case, the bank jumped right in and filed a replevin action which caused us to do a great deal of work and things that we believe were unnecessary and the Attorney General's office had to get into it, and they in turn finally negotiated a settlement.

SENATOR KREMER: Okay. Thank you, Jerry. Thank you for your testimony. Okay. Did you have a question? Okay. Thank you.

JERRY VAP: Thank you.

SENATOR KREMER: Next, wishing to testify as a proponent.

JAY REMPE: Senator Kremer, members of the committee, again my name is Jay Rempe, R-e-m-p-e, here on behalf of Nebraska Farm Bureau and supporting LB 492. And I think basically we support the bill because anything that we can do to clarify and strengthen the Public Service Commission's ability to protect that grain for the owners of the stored grain in the elevator we are supportive of. So with that, I'd be happy to answer any questions.

SENATOR KREMER: (Exhibit 11) Thank you, Jay. Any questions? Seeing none, thank you for your testimony. Anyone else wanting to testify as a proponent? Anyone wishing to testify as an opponent? Anyone wishing to testify in a neutral capacity? Okay. We have a letter submitted by the Nebraska Bankers Association in the neutral, is that right, in the neutral capacity, on LB 492. Thank you.

ROBERT ANDERSEN: Senator Kremer, my name is Robert C. Andersen, A-n-d-e-r-s-e-n, and I am testifying today in a neutral capacity, but I'm actually testifying on behalf of CoBank. CoBank, you may recall a year ago, the last time this was addressed, was concerned about the impact this would have on extending credit to our cooperatives across

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 35

LB 492, 346

the state as they have gone through this, the modified form here, at this point in time. While it's not something they really like, they're not going to oppose it nor do they want to support (inaudible), you know, share that with the committee here, so in their behalf they want to be...share with you that they would like to be neutral on this bill. I'd welcome any questions you may have.

SENATOR KREMER: Okay. Thank you, Bob. Any questions for Mr. Andersen? Seeing none, thank you for your testimony.

ROBERT ANDERSEN: Thank you, Senator.

SENATOR KREMER: Anyone else wish to testify in a neutral? Seeing none, that will close the hearing on LB 492. And we will open the hearing on LB 346. This we have designated as a committee bill and so Rick Leonard will again introduce LB 346.

LB 346

RICK LEONARD: (Exhibit 12-13) Thank you, Mr. Chairman. Chairman Kremer, members of the committee, again my name is Rick Leonard, R-i-c-k L-e-o-n-a-r-d, and I am research analyst staff for the Agriculture Committee. LB 346...first, LB 346 arises from an interim study resolution cointroduced by a number of senators including Senator Wehrbein, who is now a member of the committee. It incorporates recommendations arising from interim study hearings that we held in numerous consultations with the Beginning Farmers Board and other stakeholder groups. LB 346 amends the Beginning Farmer Tax Credit Act, It is a program first enacted in 1999 by LB 630. The purpose of that program has been to assist beginning farmers in competing in land rental markets by offering an incentive to landowners, which is currently, under current law a refundable state income tax credit of 5 percent of either cash rental income or a cash equivalent of a share rent. The original fiscal note, when this bill was first enacted, estimated an annual cost of this program in terms of forgone revenue from landowners claiming a credit of nearly a million dollars. The actual utilization of this program has fallen well short of that goal or what the Legislature anticipated at the time would be used. As a matter of fact,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 36

LB 346

the current year commitments, certified credits have been closer to around \$70,000, well short of the \$1 million. The bill addresses disincentives that have been found and identified through the process as limiting factors of the usefulness of this program. One of those identified the value to the landowner is insufficient to overcome opportunity costs of renting to an established farmer and the risks that are associated with renting to a beginning farmer. The net worth qualification of beginning farmers has been said to be overly restrictive. Asset owners...there were some asset owners who would like to participate in the program, but didn't meet the majority of farm and labor management requirement. And the farm management program costs, to qualify, is a discouraging...small but discouraging factor to the beginning farmer. The bill then, the primary provisions of the bill: A) increase the maximum income tax credit to 10 percent of the gross income and 15 percent of the cash equivalent of a share rent. Increases the net worth qualification for a beginning farmer with whom you can enter an agreement with in order to qualify for the credit from the current \$100,000 net worth to \$200,000; B) allows immediate family inheritors of land, such as a spouse, children or siblings of an individual who would have qualified as an asset owner to also qualify. For instance, a retired farmer passes away and his son, a dentist in Omaha, inherits the land and wouldn't meet the day-to-day labor management requirements, but we'd still like to give an opportunity to a beginning farmer. Our amendments address a situation like that and say, it's a matter of policy we'd like to encourage that person, as well, to be able to give a beginning farmer a chance; C) and allows...offers a refundable credit to beginning farmers, a one-time \$500 maximum credit to a beginning farmer for the cost of the farm program, management program, that's required to...as a qualification for beginning farmers. The bill has two other miscellaneous provisions: requires the beginning farmer board to meet a minimum of twice yearly, rather than quarterly, the board may still meet more often if necessary but the board felt they could get their work done in two meetings, rather than four and realize some cost savings from that. Then it also addresses an ambiguity regarding the role of the board in approving soil and water conservation plans. The board doesn't necessarily have the expertise to judge whether a conservation plan is adequate,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 37

LB 346

but the bill does retain the requirement that a conservation plan be introduced. And most typically those would be conservation plans that were prepared for qualification under the federal farm programs. The primary change is to encourage greater utilization have other objectives as well that benefit beginning farmers and better achieve the objectives of the program. The higher incentive for share rent addresses the disincentive to rent via the share rent method. And I was to refer to a handout, and I will have to have those distributed later, I don't have them ready. I had done a comparison...walked through a couple of examples of a share rent as compared to a cash rent example for a wheat or a corn example to demonstrate that the current law provides somewhat of a disincentive to the share rent method, which we believe is a much better value for the beginning farmer, much better avenue for getting started in the business and we'd like to encourage that. So that was one of the reasons for allowing a higher incentive for the share rent. The higher net worth threshold is more consistent with data regarding young farmer net worth. The current \$100,000 net worth is very restrictive. According to a UNL farm management report, it says the average net worth is closer to...of farmers under 31 is closer to \$140,000. Current threshold likely disqualifies right off the bat a majority of farmers under age 30. And I think LB...the net worth requirement is more in line with lender assessments that they make to determine the viable farming operation. Under the current 5 percent credit, there is occasional informal benefit sharing that occurs. For instance, the landowner may offer maybe a slight break on the rent or some other method of passing some of the benefit on to the beginning farmer. We believe that the 10 percent rate, more benefit sharing is likely to occur. So we believe there's...most of the incentives and the changes are directed toward the landowner, but we think there's benefits to the beginning farmer under the bill as well. I have an amendment which I will also have to distribute after my testimony that basically makes a clarification that the higher incentive rates, the changes taking place in the bill, apply to credits earned during the 2006 tax year, in which case those credits wouldn't be claimed until the 2006 tax returns are filed in 2007. It probably better reflects the fiscal note that the fiscal impact of this bill won't begin starting to be felt until the second year of the upcoming biennium, the final quarter of that upcoming

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 38

LB 346

biennium. And the full fiscal impact would probably be phased in, in an additional two years beyond that. And it would also remove the emergency clause from the bill. And I will get with our page and make sure I get that...those items distributed and I apologize.

SENATOR KREMER: Okay. Thank you, Rick. Senator Wehrbein.

SENATOR WEHRBEIN: Rick, I noticed the fiscal note, it talks about the DOR said there was no requirement in the bill about the certification. Do you think that's something that ought to be in there too?

RICK LEONARD: Yeah. That's an additional...unfortunately we don't get those fiscal notes until last night, so I didn't have a chance to get that prepared, but that was an additional thing I would have brought up.

SENATOR WEHRBEIN: Okay. Thank you. It seems logical.

SENATOR KREMER: Okay. Any other questions?
Senator Burling.

SENATOR BURLING: Rick, isn't something like this very difficult to anticipate the fiscal note? Do you know what criteria was used?

RICK LEONARD: It certainly is, and I can tell you, in fact, when we developed the bill in working with the Beginning Farmer Board and people like the Center for Rural Affairs that work closely with this program, trying to get some idea of how many more people, obviously the more people who are taking advantage the more beginning farmers are given an opportunity, trying to make an estimate of how many would be. I had done some back of the envelope figuring, assuming that the changes to the bill achieve a 50 percent increase in utilization, where currently about 45 to 50 landowners qualifying for the credit currently, I'm presuming 75 to 80. I did talk with the Department of Revenue and asked about their methodology. They're assuming that the full impact of the bill three years down the road will be more of a...about a \$450,000 a year cost to the state. I asked how that was determined, and what they had done is gone to the Beginning Farmer Board report and looked at statistics of the number of landowners inquiring about the program. And currently

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 39

LB 346

only about 20 percent of the...maybe less than that, but we have four...I can't recall the numbers on, I'll have some information distributed to you, but it was a...of those remaining landowners who hadn't completed a packet, hadn't qualified for one reason or another, they had made the assumption that a third of those who had either not qualified or elected not to enter the program would qualify and enter the program which would bring us more to about 100 or 110 cases per year, qualifying for the credit. So basically I'm presuming, in some information I passed out earlier, I was presuming a 50 percent increase in utilization and they're assuming about double utilization.

SENATOR BURLING: Thank you and has this program been in effect long enough to know about the stability of the beginning farmers that have utilized it? Are they all still in business or is there any tracking process?

RICK LEONARD: We've not gone very long, as you know, you qualify for the credit for three years. I'm not aware. I think there are a couple instances of where a beginning farmer and a landowner who qualified for the credit that didn't continue, I think, I don't think there's been very many who have gone...didn't complete their three years. And I don't have statistics, and I bet you Marian Beethe, following me, will have more information about how many of those farmers are still farming today.

SENATOR KREMER: (Exhibit 14) Any other questions? Thank you, Rick. We will take the first proponent and while they're coming, I'd like to read into the record a letter from Nebraska Bankers Association in support of LB 346. I would also like to state that this beginning farmer program was initiated by Senator Wehrbein, and the bill that he introduced and how many years has it been, was it three years ago?

SENATOR WEHRBEIN: It sounds like '99, just a short time.

SENATOR KREMER: Time flies, doesn't it? But he's been very active in this and we appreciate it, all the efforts that he's done and it hasn't been utilized near as much as we anticipated. So that's why we're here where we are today. So thank you, we're ready.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 40

LB 346

DALE POHLMANN: (Exhibit 15) Thank you, Senator Kremer, and good afternoon, senators. My name is Dale Pohlmann, last name is spelled P-o-h-l-m-a-n-n. I've served as chairman of the Beginning Farmer Board of directors, since the organizational meeting in late 1999. I'm testifying to you on behalf of the entire board of directors. Our board enthusiastically backs the concept of the original Beginning Farmer Tax Credit Act legislation. Fewer and fewer young or beginning farmers are entering agriculture while older farmers must soon begin disposing of their land and other farm assets. Unless younger beginning farm families are ready and able to take over these farms, much of the land will be further concentrated in the hands of fewer and larger farms. This trend will just increase the problems occurring in rural communities throughout the state. Statistics from the Nebraska Cooperative Extension Service point out why we need to be concerned about the future of Nebraska farm operators. Over a 20-year period, farmers under 35 years of age have shrunk from 22 percent of all farmers down to 8 percent. During that same period, farmers over 65 years of age have increased from 15 percent of all Nebraska farmers up to 45 percent. We applaud the members of the legislative Agriculture Committee for reviewing the original Beginning Farmer Tax Credit Act during this past year and introducing Legislative Bill 346 to make needed changes to the original Beginning Farmer Tax Credit Act. LB 346 addresses three very important and needed changes. Number one, it increases the asset owner qualifications to include a spouse, child or sibling who acquires an ownership interest in agricultural assets from an individual or trustee who would qualify as an owner of agricultural assets under the original act. Secondly, it changes the maximum net worth of the beginning farmer from \$100,000 to \$200,000 to more accurately reflect the needs of today's highly capitalized agriculture. LB 346 also increases the tax credit which will provide more incentive for agricultural asset owners to consider renting to a beginning farmer. In our opinion, these three major changes to the original act should help us improve participation and accomplish the original intentions of the act. I would be glad to explain the needs for these three changes in more detail, if desired by your committee members. Our board also supports the other changes made by LB 346. These changes include a new definition of share rent; changing required board meetings from quarterly to at least twice per year; removing the need

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 41

LB 346

for board approval of the nutrient management plan and soil conservation plan; a one-time tax credit to the beginning farmer up to \$500 to reimburse the cost of a financial management class; and increasing the tax credit to the agriculture asset owner who shares in the risk by renting on a share agreement rather than asking for guaranteed cash rent. Again, we thank the members of this committee who have taken the time to study this issue and give consideration to making the beginning farmer program an even better program. I would be glad to answer any questions you may have at this time.

SENATOR KREMER: Okay. Thank you, Dale. Any questions?
Senator Wehrbein.

SENATOR WEHRBEIN: Well, I don't really have a question. I just want to thank you for all the hard work you've put in, and I think you've been since the beginning, you and the board, and I'll say the same thing to Marian when she comes up because I think this is key to it, is to having a board that's really interested. And I also appreciate the letter from the Nebraska Bankers which I don't recall having before, because the banking community and the financial community has to be a big help to young agriculturalists as they start out, which we all know.

DALE POHLMANN: Thank you.

SENATOR WEHRBEIN: And I think these are good initiatives, particularly on going from share rent because that's an issue. I know cash rents are rising rapidly instead of share rents. And if we can encourage some risk taking back to the landlords a little bit, I think is a very valid consideration. I just had an incident at home where we had a good year, cash rents are going up, a young farmer just up and quit. He said, I just can't take it. When that happens, it's kind of shortsighted to have rents raised that quick, but I appreciate this approach.

DALE POHLMANN: Thank you.

SENATOR KREMER: Thank you, Senator Wehrbein. Any other questions? Dale, the \$500 reimbursement for the cost of the management class, can you just bring us up to date a little bit what is required of that beginning farmer for him to be

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 42

LB 346

able to participate in the program, that he has to go to class and what are the classes involved and things?

DALE POHLMANN: It's a little bit of a gray area, it's not totally written in stone, but what our committee and board has done in the past few years is look at each application and they have to tell us what their educational background was. And if they've taken some agricultural courses, either through the community college or the university or have some ag education background, we waive that requirement. It's only if it appears to us that there's just a real strong need because they haven't taken much in the past.

SENATOR KREMER: That would help reassure some success from their point of view, doesn't it?

DALE POHLMANN: Yes.

SENATOR KREMER: Would that \$500 not be granted to them if you waive the requirement?

DALE POHLMANN: That's correct, this is only...

SENATOR KREMER: That \$500 is only if they took the courses, the management courses.

DALE POHLMANN: That's certainly my understanding, yes.

SENATOR KREMER: Okay. Any other questions? Thank you, Dale. Next proponent.

MARIAN BEETHE: I'm not supposed to be, I'm only here for questions, I guess, answering questions.

SENATOR KREMER: We will let you come up in a neutral capacity at the end and answer any questions we might have then. Okay.

MARIAN BEETHE: Is there anybody else?

SENATOR KREMER: Proponent.

ROD JOHNSON: (Exhibit 16) Senator Kremer and committee members, my name is Rod Johnson, J-o-h-n-s-o-n. I'm the executive director of the Nebraska Pork Producers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 43

LB 346

Association, here to represent our industry in supporting the LB 346 and the work that the beginning farmer program is doing. They have already done a good job of talking about what the program is all about and where it's going and we support those concepts. In what we're passing out to you, from my testimony I would ask you to take a look at the third and fourth pages which are a couple charts that I have put together, specifically about the pork production industry in Nebraska. The first chart shows what the track record has been, so to speak, over the last few years of the hog numbers in Nebraska. And you'll see that we had a peak there in the early nineties, and since then we've had quite a drastic fall off in the number of hogs in Nebraska. The second chart, chart 2, relates the number of pork producers in Nebraska and it compares it to the number nationally. And as you go down that graph, you can see that we've pretty much followed the national trend except for a short time period there in the early nineties when we actually deviated away from the national average of the national trend line, and we're showing a larger number of producers than the nation was showing. That just coincidentally, coincides with the same time period when we had the largest number of hogs that we had on our farms here in Nebraska. So I am making a relationship there, that the more hogs we have we're encouraging more producers to be out there on the farms. So this is one of the things that we have been looking at as an industry. Turning to chart three, kind of shows where we stand in Nebraska as far as a percentage of the national industry. And jumping clear over to the right-hand side for the year of '03, you can see that the slaughter industry in Nebraska, the green line, is sitting there a little over 7 percent of the nation's slaughter capacity and you can see that that trend line has been on an upward climb since '94. The blue line represents the breeding herd which fell off for a while, but now is on the incline again. But the real concern is the red line, the market herd that we have in Nebraska, clear down there at 4.5 percent, a little over. So basically what this is telling us, we've got 4.5 percent of the slaughter, 6.5 percent of the pig...excuse me, 4.5 percent of the market inventory, 6.5 percent of the pigs born here, and over 7 percent of the slaughter capacity. Pigs are leaving Nebraska to be consuming corn and creating jobs in other states and then coming back to Nebraska for slaughter. With this in mind, we've created the Nebraska Model which is

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 44

LB 346

depicted in the brochure that I gave you and this is our way of promoting the pork production industry as the opportunity for the next generation to get involved in production agriculture. This is where the tie comes back to the beginning farmer program. We are looking for ways to encourage the next generation to get involved in production agriculture. I had the opportunity to meet this morning with the Beginning Farmer Board and we talked about some of these issues and looked at the same kind of numbers. The biggest thing that is out there is, as we have talked about the program, and Rick relayed this a lot in his introduction of the bill, that a lot of this is related to the rental rates that are for the property that are being transferred over to the beginning farmer. While there may be some opportunities to use that concept in the livestock industry, I think that there are a lot of limitations to that. And so as well as promoting or endorsing what is going on with this and being introduced in LB 346, I think we also need to look at other ways how we can encourage beginning farmers through the livestock industry and perhaps develop some new and different programs to work under the beginning farmer program that would be specifically tied to promoting the livestock industry. I expressed that concern or that discussion with the board this morning, and we were very agreeing that we could look at other opportunities and perhaps figure out something for the future that might work in that direction. But I think that this is an area that we need to take a look at. With that, I would be glad to answer any questions.

SENATOR KREMER: Thank you, Rod. Any questions?
Senator Burling.

SENATOR BURLING: Thank you, Rod, for being here. Do I take it from what you just said that our experience so far is that the program has been utilized more by grain farmers than by livestock farmers?

ROD JOHNSON: I believe this morning they made the statement that there had only been one livestock project worked through the program to date.

SENATOR BURLING: Okay.

SENATOR KREMER: Senator Wehrbein.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 45

LB 346

SENATOR WEHRBEIN: Thank you. I have to admit I'm surprised that the breeding number is going up. Usually people avoid the farrowing and want to get into the finishing. I assume a lot of that's associated with the risk. Do you have any comments on that?

ROD JOHNSON: I guess I would associate it to the specialized area that farrowing has become. I think the sows are probably getting more centralized in a lot of situations, and it's a very specialized industry to have the facilities, have the genetics, and have the whole program put together. So I see that as probably the main reason, but that just makes more pigs available within the state that we could transfer into the market herd, rather than have them leave the state.

SENATOR WEHRBEIN: Yeah. Well, at one time I was concerned about the finishing that you're...is relatively easy compared to the farrowing side, but there is more capital investment...

ROD JOHNSON: Right.

SENATOR WEHRBEIN: ...I assume, and the risk of the ownership, although that's being taken care of, some cases by contract, maybe in most cases. It's encouraging to see the farrowing coming up, so it looks like to me there is ample room for more finishing to go with the grain that's being produced out there, needs a home.

ROD JOHNSON: Exactly.

SENATOR WEHRBEIN: Thank you.

SENATOR KREMER: Thank you, Senator Wehrbein. Any other questions? Thank you, Rod. Thanks for your efforts, too, in helping young farmers to get started and your Nebraska Model. Next proponent.

HILARY MARICLE: Good afternoon, Senator Kremer and members of the Ag Committee. My name is Hilary Maricle, M-a-r-i-c-l-e. My husband and I farm near St. Edward and I serve on the Nebraska Farm Bureau Federation Board of Directors and chair the Young Farmers and Ranchers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 46

LB 346

Committee. I'm here today on behalf of Nebraska Farm Bureau in support of LB 346. Nebraska Farm Bureau has been and will continue to be supportive of measures that help and encourage individuals to pursue careers in agriculture. The difficulties beginning farmers face are problematic at best. Entering into farming and ranching requires tremendous start-up costs, as has already been discussed, and relies heavily on capital expenditures for the land and the machinery and the livestock, on top of the burden of health insurance and other expenses in another profession that would be covered. If you don't have a relative in the business to help, it is very difficult to start. We recognize the need for programs, incentives and assistance technically for the younger generation, and we support LB 346 for this reason. Increasing the tax incentives to landowners to rent to beginning farmers is very valuable. Just as an example, I'd like to throw out for you, my husband and I have tried to use those tax credits twice to help in some of the bidding wars in our area to get land, and they haven't been enough to make a difference. So I think this would be a great improvement on the program that is already very useful for some. However, as our members discussed this issue last fall, they were a bit troubled that more wasn't done or targeted directly toward the young farmers. One suggestion that was made, perhaps the tax credit for personal property taxes to qualified beginning farmers might be of assistance. Oftentimes, these beginning farmers purchase used equipment because they can't afford the newer equipment. The equipment is fully depreciated before they purchase it, but goes back on the personal property tax rolls when it is purchased by the younger producer. A tax credit based on the personal property taxes would help offset those taxes. If the committee is interested in such a concept, we'd certainly be willing to help draft language and cooperate in any way that we could help with that. Again, Nebraska Farm Bureau Federation supports the bill, but we would like to see more incentives targeted directly toward the younger farmer. Thank you and I'd be happy to entertain any questions you might have.

SENATOR KREMER: Any questions for Hilary?
Senator Wehrbein.

SENATOR WEHRBEIN: Thank you, Hilary. You said it wasn't quite enough to offset your outbid...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 47

LB 346

HILARY MARICLE: Right.

SENATOR WEHRBEIN: ...and it obviously went to someone else.

HILARY MARICLE: Yes, the more established farmers.

SENATOR WEHRBEIN: Yeah, I mean, you've seen that in that's...

HILARY MARICLE: Yes, in our area it's very competitive.

SENATOR WEHRBEIN: ...it must be identical everyplace across the state.

HILARY MARICLE: Yes.

SENATOR WEHRBEIN: Thank you. It's probably too late to do something like that for another year, this idea you had, although I have an investment credit idea that's coming out of committee. You might want to watch for that.

HILARY MARICLE: Okay, all right, thank you.

SENATOR WEHRBEIN: ...In another bill. It's tax...it's investment credit for livestock renovation and expansion, so it's along that line.

HILARY MARICLE: Yes, thank you.

SENATOR KREMER: Any other questions? Hilary, do you feel that the availability is more the limiting factor for young farmers getting started than anything else or...

HILARY MARICLE: The availability is the main thing for us, but I do think increasing those tax incentives and the credits are going to help, just because some of it's available, not a lot, but for the little bit that it is available, it would definitely encourage some of the established producers to work with the younger farmers.

SENATOR KREMER: Okay. Any other questions? Thanks, Hilary, for coming. You did a nice job.

HILARY MARICLE: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 48

LB 346

SENATOR KREMER: Any other proponents?

RICHARD LOMBARDI: (Exhibit 17) Members of the committee, my name is Rich Lombardi, L-o-m-b-a-r-d-i. I'm appearing today as the registered lobbyist for the Center for Rural Affairs. I'm circulating a letter from Jon Bailey in the Center in support of all provisions in this bill. We're very proud to work with Senator Wehrbein in 1999 on LB 630. And they weren't able to make it down here today on this bill, but they wanted to make sure this was entered into the record.

SENATOR KREMER: Thank you, Rich.

RICHARD LOMBARDI: Thank you.

SENATOR KREMER: Any questions? Seeing none, thank you. Anyone else wishing to testify as a proponent? How about any opponent testimony? Anyone wishing to testify in a neutral position? If not, Marian, would you come forward, and then maybe somebody has some questions they'd like to ask you. I guess tell us a little bit how long you've been working with the program.

MARIAN BEETHE: My name is Marian Beethe, B-e-e-t-h-e, and I've been with the program since right after they did the initial study, I guess, is when it started in 1999. And we've attempted to do a lot of promotion and that type of thing. A couple questions that had come up before, I'll try to answer those for you. The number of people that have quit during the three-year terms of being part of the beginning farmer, we've had one who quit renting during that three-year period. I'm not sure yet why he left the situation. We had two sisters who were beginning farmers and they completed their three-year terms, but they are no longer renting from the original owner. One of them married a farmer and moved away, and the other one went back home and is farming with her parents. So that kind of answers that, I hope, for you. We've had a real good success rate otherwise. One person has had a tax credit, received a tax credit for leasing cow/calf operation, and that has been the only one that we had. Probably part of that is that the majority of the people when they first look at this, they think of land to begin with. And we need to do a better job

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 49

LB 346

of promoting it for animals and livestock, although we've always said it was any agricultural asset, livestock, equipment, facilities. We've had several that have included irrigation systems, several have included grain bins, that type of thing.

SENATOR KREMER: Senator Wehrbein.

SENATOR WEHRBEIN: On the cow/calf, was that a cash lease or share?

MARIAN BEETHE: That was a share crop, share of the calves.

SENATOR WEHRBEIN: Okay. Thank you. I want to thank you for your hard work on this too. Everywhere I go across this state, there she is, promoting it. I appreciate...well, I don't want to exaggerate, you're not everywhere.

MARIAN BEETHE: I was going to say, not everywhere.

SENATOR WEHRBEIN: I won't get you in trouble there.

SENATOR KREMER: Any other questions that you'd like to ask Marian? The suggestion from Hilary was about a tax...personal property tax credit, I think, did you...have you looked into that or was that a discussion during the interim study at all?

MARIAN BEETHE: Yes.

SENATOR KREMER: What was...any discussion even to help more to the light of the beginning farmer and maybe the rationale of what come from that.

MARIAN BEETHE: It was a discussion and there was a lot of feelings that we should really try to do more for the beginning farmer. But when we came down to looking at the budget and so forth and so on, it was beginning to look more and more like we really needed to hone in on the availability of the agricultural asset for the beginning farmers. We still would like to see something for the beginning farmer themselves, yes, I'm sure we would, the whole board felt that way. But we were trying to make some priorities here.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 50

LB 346

SENATOR KREMER: So you feel, really, that the availability is the more restrictive factor than anything else then, is that your conclusion then?

MARIAN BEETHE: That's what we received back from the people that we talked to, when I'm out at shows and so forth. We also did a short survey of, a couple years into the program, asking, you know, what was keeping them from it. Most of them were saying that it was too much work for very little money, so they weren't going to do it. That was kind of one of the big comments that was made at that time.

SENATOR KREMER: Senator Wehrbein.

SENATOR WEHRBEIN: I've just one more question. I guess about 45 or 50 now have utilized it?

MARIAN BEETHE: Right. We just today, we went through some additional applications and added a few more, so we're up to about 55.

SENATOR WEHRBEIN: Do you have any sense, since now we've had basically five years of, has it really helped several of those, I mean, do you have any feedback, verbally you might say, anecdotally that it really helped some that might have been?

MARIAN BEETHE: That's what is told to me is that they said that without this I wouldn't have got this land. And then I talked to a young guy yesterday who is one of our beginning farmers with another owner and he had a chance to possibly rent another place. He said, it's the only way I'll ever get it is if I use this program. I talked to him last night and he said, well, he didn't think he was going to get it, he didn't know for sure, it wasn't quite enough, the guy thought.

SENATOR WEHRBEIN: The incentive to the landowner, in this case?

MARIAN BEETHE: Um-hum. Um-hum.

SENATOR WEHRBEIN: But there are receptive people out there?

MARIAN BEETHE: Yes, there are. And there's some people

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 51

LB 346

that really want to see the beginning farmers get started and help them. And it's wonderful to see that, it's just a good reaction when you see that.

SENATOR WEHRBEIN: Thank you.

SENATOR KREMER: Any other questions? Marian, how many are...what percent are using the share rental against cash rent now? I know with the new incentives might cause it to shift that way, but then...how about now?

MARIAN BEETHE: I should have looked that up, and I'm sorry, Senator Kremer, I didn't. Off the top of my head I'm going to say it was, it's probably about 10 percent, maybe 20 percent. The majority of them are cash rent, by far majority.

SENATOR KREMER: Okay. Another question I was going...do you follow up like in year one, year two? Do you make regular visits to see if things are going okay, if there's any more training they need or anything like that, or what kind of a follow-up do you make with...?

MARIAN BEETHE: We haven't done any visits. I have talked to people over the phone just to see how things were going. And I guess we haven't, I haven't asked if additional training would have been beneficial to them. That is a good point to make. We want to do more of an organized evaluation of the program, and we haven't gotten that done yet.

SENATOR KREMER: Okay. Are any of the retired farmers passing on any of the benefits to the beginning farmer, just voluntarily, are they...

MARIAN BEETHE: There are a few.

SENATOR KREMER: ...do you think because they're getting this they're giving them a little lower rent or something like that?

MARIAN BEETHE: There's some that have lowered the rent some. Some have split it with the beginning farmer. Some have...I had one person who took the money that they were getting as a tax credit and put that in an escrow account

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 52

LB 346

and used that then, he said, at the end of the three years that would become part of the beginning farmer's money to be able to buy, start purchasing, so that would be the down payment to him, to purchase land from him. I had another one that was using it to set that aside to be able to purchase more land to be able to bring the beginning farmer in as a, they had it set up on a whole schedule for about 25 years, where then at the end of 25 years he'd be a full 50/50 partner. This wasn't an older farmer, either, that was the owner.

SENATOR KREMER: Did they...

MARIAN BEETHE: They're not quite as far along as they had hoped. I talked to them about two weeks ago and they said it's slower but they're from the western part of the state, southwestern, and he said the drought hasn't helped us.

_____ : They're slower out there.

SENATOR KREMER: Yeah.

SENATOR ERDMAN: I don't think she was saying we're slow.

SENATOR KREMER: No, I thought you were...

SENATOR ERDMAN: Well, that's what she was saying.

MARIAN BEETHE: What did I say?

SENATOR KREMER: You said they're slower from western...no, you didn't say that...

SENATOR ERDMAN: Senator Kremer was trying to make disparaging comments about those of us from western Nebraska. I know there's one in the audience that would probably take exception to that.

SENATOR KREMER: Well, that's really good to hear, that there are some retired farmers that are really concerned, that they're even willing to share part of that, so it shows that there are people out there that are trying to do something with the beginning farmers. And this incentive just kind of boosts it along a little bit and gives them some real reasons to do it. Any other questions of Marian?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Agriculture
February 08, 2005
Page 53

LB 346

SENATOR WEHRBEIN: Well, I don't want to belabor. Is it ranchers that do it or is it mostly agrifarming?

MARIAN BEETHE: It's predominantly the land of production corn, soybeans, that type of thing. We have about two or three ranches but they're not very large, and several pastures, you know, that are included with the other production land.

SENATOR KREMER: Any other questions? That was a good question, thank you. Marian, thank you and Dale for the efforts you put forth in this. How many board members do you have and do you represent different industries or what?

MARIAN BEETHE: Yes. There's a board member from each one of the three congressional districts, there's one from...Dale serves as the lending institutions; Darrell Mark serves as the university or as an educational component; and the Department of Revenue, I knew there was somebody I was going to forget, they also have a representative on the board, as well as the Department of Ag.

SENATOR KREMER: Okay. Thank you much for your efforts.

MARIAN BEETHE: Okay. Thank you.

SENATOR KREMER: Appreciate it. Anyone else in a neutral capacity? If not, I think Rick would like to close.

RICK LEONARD: (Exhibit 18-19) Thank you. Again, Rick Leonard. The only reason of closing is to enter a couple, three items into the record: a letter from the NBA, Bankers Association (Exhibit 14). I'm not sure that that's been distributed, in support of the bill; the Nebraska Cattlemen, in support of the bill; and a letter from Steve Henry, who is a former landowner participant in the beginning farmer program, in support of the bill.

SENATOR KREMER: Okay. Thank you. With that we'll close the hearing on LB 346 and close the hearings for today. Thank you all that have been participating. We'd like to go into Exec Session for a while.